

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

QUINTERO COMMUNITY
ASSOCIATION, INC., *et al.*,

Plaintiffs,

v.

HILLCREST BANK, *et al.*,

Defendants.

Case No. 1016-CV13693

Consolidated with Case No: 1116-CV01878

Div. No. 18

ENTRY OF APPEARANCE

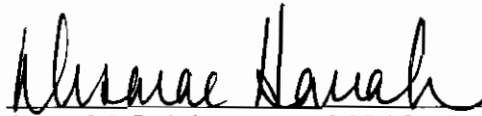
COME NOW Steven M. Leigh, Robert D. Kroeker, Desarae G. Harrah, and the law firm of Martin, Leigh, Laws & Fritzlen, P.C., 900 Peck's Plaza, 1044 Main Street, Kansas City, Missouri, 64105, and herewith enters their appearances as counsel for the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Hillcrest Bank. All further pleadings and papers herein directed to or affecting this action and said parties should be served, via regular mail, upon the undersigned.

2011 MAY 24 PM 3:24
FILED
CIRCUIT COURT
JACKSON CO. MO. KC
S. M. Leigh

Respectfully submitted,

MARTIN, LEIGH, LAWS & FRITZLEN, P.C.

By:



Steve M. Leigh MO No. 29268

Robert D. Kroeker MO No. 33282

Desarae G. Harrah MO No. 57969

900 Peck's Plaza

1044 Main St.

Kansas City, Missouri 64105

Telephone: (816)221-1430

Facsimile: (816)221-1044

sml@mllfpc.com; rdk@mllfpc.com

dgh@mllfpc.com

ATTORNEYS FOR FDIC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was delivered via first class U.S. mail, postage prepaid, this 24th day of May 2011, to:

Linus L. Baker
6732 W. 185th Terr.
Stillwell, Kansas 66085-8922
ATTORNEY FOR PLAINTIFFS

Kelly A. Campbell
1000 Walnut St., Ste. 1400
Kansas City, Missouri 64106
PRIOR ATTORNEY FOR HILLCREST
BANK

Thomas Roy Larson
1010 Walnut, Ste. 500
Kansas City, Missouri 64106
ATTORNEY FOR DEFENDANTS
WHEELER, ASNER, BLITT, CAMPBELL,
FINGERSH, WHITE, DEGEN, GERVY,
RICHARDS, DAVIES, LIEBERMAN, AND
HILLCREST BANCSHARES

Mark S. Carder
1201 Walnut, Ste. 2900
Kansas City, Missouri 64106
ATTORNEY FOR DEFENDANTS FORGEY,
DAVIS, HOLDERMAN,
SCHWARTZKOPF, GALLATIN, AND
SCHNEIDER

Quintero Clubhouse Villas, LLC
Gary Ned McClung
8345 NE 83rd
Kansas City, Missouri 64158
DEFENDANT

Quintero Clubhouse Suites, LLC
Gary Ned McClung
8345 NE 83rd
Kansas City, Missouri 64158
DEFENDANT

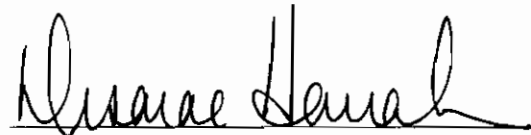
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Gary Ned McClung
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Kansas City, Missouri 64158
DEFENDANT

Quintero Charter Properties, LLC
Gary Ned McClung
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Kansas City, Missouri 64158
DEFENDANT

Quintero Entrada, LLC
Gary Ned McClung
8345 NE 83rd
Kansas City, Missouri 64158
DEFENDANT

Crossover Capital, LLC
Gary Ned McClung
8345 NE 83rd
Kansas City, Missouri 64158
DEFENDANT

Private Club Financial Management, LLC
Gary Ned McClung
8345 NE 83rd
Kansas City, Missouri 64158
DEFENDANT


Attorney

11 MAY 27 PM 1:21

Defendants.

Div. No. 18

COMES NOW Federal Deposit Insurance Corporation ("FDIC") in its capacity as Receiver for Hillcrest Bank, Overland Park, Kansas ("Hillcrest"), pursuant to Rules 52.01, 52.13(f) and 12 U.S.C. § 1821(d)(2)(A)(i), and moves for substitution of FDIC in its receivership capacity for Hillcrest as the proper party in the above-captioned matter, and in support thereof, states and alleges as follows:

1. By order dated October 22, 2010, the Office of the State Banking Commissioner of Kansas closed Hillcrest and determined that the FDIC would serve as receiver for Hillcrest ("Order"). A true and correct copy of the Order is attached hereto as Exhibit "A" and is incorporated herein by reference.

2. FDIC accepted the appointment pursuant to 12 U.S.C. §1821(c)(3)(A). A true and correct copy of the Appointment is attached hereto as Exhibit “B” and is incorporated herein by referenced.

3. As such, FDIC in its capacity as Receiver should be substituted for Hillcrest.

5

Based on the Appointment of FDIC as Receiver, FDIC has succeeded to all rights, titles, powers, and privileges of Hillcrest. 12 U.S.C. § 1821(d)(2)(A)(i).

4. FDIC stands in the shoes of Hillcrest with respect to all matters, including the present litigation.

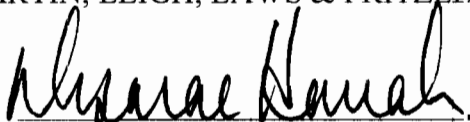
5. Rule 52.01 provides that every action shall be prosecuted in the name of the real party in interest. Rule 52.13(f) allows the substitution of parties where one party has transferred its interest to another as occurred in this instance.

6. As FDIC is the real party in interest as it relates to the subject matter of this case, FDIC should be substituted for Hillcrest in the above-captioned matter.

WHEREFORE, for the above and foregoing reasons, the Federal Deposit Insurance Corporation, in its capacity as Receiver for Hillcrest Bank respectfully requests that the Court grant its Motion. A proposed order is attached for the Court's convenience.

Respectfully submitted,

MARTIN, LEIGH, LAWS & FRITZLEN, P.C.

By: 

Steve M. Leigh MO No. 29268

Robert D. Krocker MO No. 33282

Desarae G. Harrah MO No. 57969

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Kansas City, Missouri 64105

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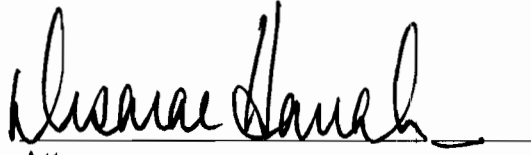
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Attorney



**STATE OF KANSAS
OFFICE OF THE STATE BANK COMMISSIONER
DIVISION OF BANKING**

IN THE MATTER OF)

Hillcrest Bank)
11111 W. 95th Street, Suite 100)
Overland Park, Kansas 66214)
SB. 22173)

Case No. 2009-284

**DECLARATION OF CRITICALLY UNDERCAPITALIZED CONDITION
AND TENDER OF RECEIVERSHIP**

WHEREAS, Hillcrest Bank is a duly organized Kansas banking corporation, chartered by the State of Kansas, and as such, is subject to the Kansas Banking Code, K.S.A. 9-101 *et seq.*; and

WHEREAS, pursuant to the Kansas Statutes, the State Bank Commissioner is the official charged with administering and enforcing the Kansas Banking Code, to ensure proper management and operation of Kansas banks to protect depositors; and

WHEREAS, K.S.A. 9-1902a defines "critically undercapitalized" as follows:

"A bank or trust company is critically undercapitalized when the ratio of its capital to total assets is equal to or less than 2.0%. For purposes of this section, capital shall be the sum total of the institution's common stock, surplus, undivided profits, capital reserves, noncumulative perpetual preferred stock and outstanding cumulative perpetual preferred stock (including related surplus)."

WHEREAS, pursuant to K.S.A. 9-1903, the Commissioner took charge of Hillcrest Bank, which, upon examination and report to the Commissioner, appeared to be critically undercapitalized on October 22, 2010; and

WHEREAS, pursuant to K.S.A. 9-1905, the Commissioner completed a thorough investigation of the affairs and condition of Hillcrest Bank and adopts herein the findings of fact that are set forth in the Order Taking Charge which are reflective of the bank's actual condition; and

WHEREAS, the Commissioner concludes, as a matter of law, that Hillcrest Bank is "critically undercapitalized" within the meaning of K.S.A. 9-1902a; and

WHEREAS, the Commissioner is satisfied that Hillcrest Bank cannot sufficiently recapitalize, resume business, or liquidate its indebtedness to the satisfaction of its depositors and creditors.

NOW, THEREFORE, BE IT RESOLVED AND DECLARED that pursuant to K.S.A. 9-1905, the Commissioner is satisfied that Hillcrest Bank cannot sufficiently recapitalize, resume business, or liquidate its indebtedness to the satisfaction of depositors and creditors, and terminates Hillcrest Bank's authority to engage in banking business.

BE IT FUTHER RESOLVED AND DECLARED that pursuant to K.S.A. 9-1905 and 9-1907, the Commissioner knowing that the deposits of said bank are insured by the Federal Deposit Insurance Corporation, the Commissioner hereby appoints the Federal Deposit Insurance Corporation as receiver of Hillcrest Bank and calls upon it to perform the duties of a receiver pursuant to Chapter 9, Article 19 of the Kansas Statutes Annotated.

IT IS SO ORDERED. DONE THIS 22nd DAY OF OCTOBER, 2010, AT TOPEKA, KANSAS.

BY: 
JUDI M. STORK, ACTING STATE BANK COMMISSIONER

CERTIFICATE OF SERVICE

I, _____, hereby certify that on this ____ day of
(print your name)

October, 2010, I personally served upon _____
(print recipient's name)

at the following address: _____
(main bank or branch address)

at _____ pm, a true and correct copy of the **DECLARATION OF CRITICALLY**
(fill in time)

UNDERCAPITALIZED CONDITION AND TENDER OF RECEIVERSHIP.

Signature

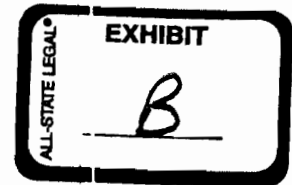
Print Name

Title



FDIC

Division of Resolutions and Receiverships
Dallas Regional Office
1601 Bryan Street
Dallas, Texas 75201



Telephone: (214) 754-0098

October 22, 2010

Ms. Judi M. Stork, Acting Bank Commissioner
Office of the State Bank Commissioner
State of Kansas
Topeka, Kansas

Subject: Hillcrest Bank
Overland Park, Kansas – In Receivership
Acceptance of Appointment as Receiver

Dear Acting Commissioner Stork:

Please be advised that the Federal Deposit Insurance Corporation accepts its appointment as Receiver of the captioned depository institution, in accordance with the Federal Deposit Insurance Act, as amended.

Sincerely,

FEDERAL DEPOSIT INSURANCE CORPORATION

By: *Daniel M. Bell*
Name: Daniel M. Bell
Title: Receiver-in-Charge